

Respondent

2. Respondent Waterous Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Minnesota with its principal place of business located at 300 John E Carroll Avenue East, South Saint Paul, Minnesota 55075. Waterous manufactures and sells Mid-Ship Mounted Fire Pumps in the United States. In 1993, Waterous accounted for more than 40 percent of U.S. Mid-Ship Mounted Fire Pump sales.

Jurisdiction

3. Respondent Waterous sells and ships Mid-Ship Mounted Fire Pumps from its production facility located in Minnesota to customers located throughout the United States. Respondent maintains and has maintained a substantial course of business, including the acts and practices herein alleged, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

Mid-Ship Mounted Fire Pump Industry

4. The market for Mid-Ship Mounted Fire Pumps in the United States includes three principal competitors. In addition to Respondent Waterous, two other companies sell Mid-Ship Mounted Fire Pumps to OEM's in the United States, Hale Products, Inc. (sometimes referred to as "Hale Products"), and W.S. Darley & Company, Inc. (sometimes referred to as "Darley"). These three firms have each sold fire pumps in the United States for over 50 years, and in that time there has been little if any attempted de novo entry into the United States market. Respondent Waterous and Hale Products are the two largest manufacturers and together account for close to or more than 90 percent of Mid-Ship Mounted Fire Pump sales in the United States.

5. For over 50 years, and until approximately 1991, Respondent Waterous sold Mid-Ship Mounted Fire Pumps through a network of exclusive OEM's. Respondent Waterous sold or contracted for the sale of such pumps to OEM's with the understanding that those OEM's would commit to selling only Waterous Mid-Ship Mounted Fire Pumps. Hale Products also sold on an exclusive basis, but to a different group of OEM's. Thus, prior to approximately 1991, few if any OEM's offered Mid-Ship Mounted Fire Pumps manufactured by more than one fire pump manufacturer, and fire truck buyers were able to choose between Mid-Ship Mounted Fire Pumps manufactured by different firms only by considering different OEM's.

6. Respondent Waterous believed that continued adherence to the exclusive sales policy by both itself and Hale Products would exclude or tend to exclude other competitors and would tend to reduce competition between manufacturers of Mid-Ship Mounted Fire Pumps over price and over non-price terms such as quality differences and delivery times.

7. During the 1980's and until approximately 1991, Respondent Waterous continued to adhere to its exclusive dealing policy. Waterous terminated or threatened to terminate OEM's that resold Mid-Ship Mounted Fire Pumps manufactured by Waterous Company to OEM's outside of Waterous Company's exclusive OEM network, or delayed or threatened to delay

shipments to such OEM's.

Anticompetitive Effects

8. The acts, practices, and methods of competition of Respondent Waterous as alleged in Paragraphs 5 through 7, were and are substantially to the injury of the public in the following ways, among others:

- a. By substantially lessening competition in the sale and marketing of Mid-Ship Mounted Fire Pumps, or by excluding or tending to exclude other actual or potential pump manufacturers from selling Mid-Ship Mounted Fire Pumps to a substantial number of OEM's; and
- b. By facilitating an allocation of customers between Respondent Waterous and Hale Products.

Violation of Law

9. Therefore, the acts, practices and methods of competition of Respondent Waterous, as herein alleged, were and are all to the prejudice and injury of the public and constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The acts practices and methods of competition of Respondent, as herein alleged, or the effects thereof, are continuing or could recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-second day of November, 1996, issues its complaint against said Respondent.

By the Commission, Commissioner Azcuenaga and Starek dissenting.

Donald S. Clark
Secretary